

20.25E.040 Nonconforming Shoreline Conditions

A. Purpose.

Many existing uses and developments would not be allowed pursuant to the Shoreline Use Charts (refer to LUC 20.25E.030) and development regulations in this Part 20.25E LUC that are in effect to implement the SMP. The purpose of this section is to allow the continued operation and modernization of nonconforming shoreline uses and developments that were legally established or constructed prior to adoption of the SMP. An additional purpose of this section is to allow existing development that is nonconforming to the use requirements of LUC 20.25E.030 and the development regulations of this Part 20.25E LUC to undergo limited conversions that allow the existing development to accommodate allowed shoreline uses with some amount of proportional compliance.

B. Types of Nonconforming Shoreline Conditions – Definitions.

A nonconforming shoreline condition refers to a site that contains either a nonconforming shoreline use or nonconforming shoreline development which was lawfully established or constructed prior to [insert effective date], as defined in this paragraph B and based on documentation provided pursuant to paragraph D of this section.

1. Nonconforming Shoreline Use. The use of a structure or land which was permitted when established, in existence on [insert effective date], and not discontinued or destroyed, but is not otherwise allowed under LUC Chart 20.25E.030.
2. Nonconforming Shoreline Development. A structure or non-structural exterior site development which was permitted when established, in existence on [insert effective date], and not discontinued or destroyed, but does not otherwise comply with Part 20.25E LUC.

C. Applicability.

1. This section does not apply to nonconforming residential development. Refer to LUC 20.25E.065.J (Residential Shoreline regulations).
2. This section applies to all nonconforming conditions occurring within the Shoreline Overlay District that are not otherwise governed pursuant to LUC 20.25E.065.J (Residential Shoreline Regulations).
3. The nonconforming provisions of WAC 173-27-080 do not apply within the Shoreline Overlay District.
4. The nonconforming provisions of LUC 20.20.070 and 20.20.560 do not apply within the Shoreline Overlay District.

5. Expansions or modifications of a nonconforming shoreline use, structure, or site located within a critical area or critical area buffer identified pursuant to LUC 25.25H.030 shall comply with any applicable requirements of Part 20.25H LUC (Critical Areas Overlay District), unless specifically exempted by this Part 20.25E LUC (Shoreline Overlay District).
6. In event of a conflict between this section LUC 20.25E.040 (Nonconforming Conditions) and Part 20.25H LUC (Critical Areas Overlay District), the requirements of this section LUC 20.25E.040 shall control.
7. Modifications to signs associated with a nonconforming use or development shall comply with any applicable requirements of the Sign Code, Chapter 22B.10 BCC now or as hereafter amended.

D. Documentation.

As part of the permit application process, and before undertaking work allowed by this section, the applicant shall submit documentation demonstrating that the nonconforming shoreline condition was legally established and maintained over time. The Director shall determine based on paragraphs D.1 and D.2 of this section whether the documentation is adequate to support a determination that the use and/or development constitutes a legally established nonconforming shoreline condition under the terms of this section. The Director may waive the requirement for documentation when a nonconforming shoreline condition is clearly known.

1. Nonconforming Shoreline Condition Permitted when Established. Documentation that the nonconforming shoreline condition was permitted when established includes, but is not limited to, the following:
 - a. Building, land use or other development permits; or
 - b. Land use or zoning code or land use district maps in effect at the time the nonconforming shoreline condition was established.
2. Nonconforming Shoreline Condition Maintained Over Time. Documentation that the nonconforming shoreline condition has been maintained over time, and not discontinued, destroyed, or relinquished as described in this section includes, but is not limited to, the following:
 - a. Utility bills;
 - b. Income tax records;
 - c. Business licenses;
 - d. Listings in telephone or business directories;
 - e. Advertisements in dated publications;
 - f. Building, land use or other development permits;
 - g. Insurance policies;
 - h. Leases; or

- i. Dated aerial photos.
3. Appeal of Director Determination. The Director's determination of whether a use or development constitutes a lawfully established nonconforming shoreline condition may be appealed pursuant to LUC 20.35.250, Appeal of Process II decisions.

E. Regulations and Thresholds Applicable to All Nonconforming Shoreline Conditions.

1. Ownership. The status of a nonconforming shoreline condition is not affected by changes in ownership.
2. Maintenance and Repair. Routine maintenance and repair associated with nonconforming shoreline conditions is allowed. "Routine maintenance" includes those usual acts to prevent decline, lapse, or cessation from a legally established condition. "Routine repair" includes in-kind restoration to a state comparable to its original condition within a reasonable period after decay has occurred. Improvements meeting the definition of an alteration or a replacement are not considered maintenance or repair.
3. Alterations. Improvements that cost more than 50% of the replacement value of any individual structure or non-structural exterior site development undergoing improvement are defined as alterations and shall comply with paragraph G.2 of this section.
4. Replacements Allowed only in Office (O) and Office Limited Business (OLB) Land Use Districts. Improvements that cost more than 100% of the replacement value of any individual structure or non-structural exterior site development undergoing improvement, or improvements that remove and reconstruct a nonconforming shoreline development irrespective of cost, are defined as replacements and shall comply with paragraph G.3 of this section. Replacements that are not governed by the provisions of paragraph G.3 of this section shall be considered new development, and shall require full compliance with the provisions of the SMP.
5. Permits. If not exempt under the terms of LUC 20.25E.170, a Shoreline Substantial Development Permit shall be obtained prior to undertaking any maintenance and repair, alteration, or replacement authorized by this section.

F. Regulations Applicable to Nonconforming Shoreline Uses.

1. Operations. Operations associated with a nonconforming shoreline use may continue.
2. Expansions Prohibited. A nonconforming shoreline use may not be enlarged or expanded.
3. Change of Nonconforming Uses Prohibited. A nonconforming shoreline use shall not be changed to another nonconforming shoreline use, regardless of

conforming or nonconforming status of the building or structure within which it is housed.

4. Loss of Nonconforming Shoreline Use Status.

- a. **Discontinuance.** If a nonconforming shoreline use of a structure or non-structural exterior site development is discontinued for a period of 12 months with the intention of abandoning that use, any subsequent use shall thereafter conform to the shoreline use requirements of LUC Chart 20.25E.030. Discontinuance of a nonconforming shoreline use of a structure or non-structural exterior site development for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.
- b. **Accidental Destruction.** When a structure or non-structural exterior site development containing a nonconforming shoreline use is damaged by fire or other causes beyond the control of the owner, the use may be re-established. The nonconforming shoreline development accommodating the use may be repaired and/or reconstructed in accordance with paragraph G.5 of this section.
- c. **Relinquishment.** A nonconforming shoreline use is relinquished when the nonconforming shoreline use is replaced with an allowed shoreline use pursuant to LUC Chart 20.25E.030. Upon relinquishment, the nonconforming shoreline use rights no longer apply and the nonconforming shoreline use may not be re-established.

G. Regulations Applicable to Nonconforming Shoreline Development.

1. **Nonconforming Shoreline Development May Remain.** Nonconforming shoreline development may remain unless specifically limited by the terms of this section.
2. **Permitted Alterations to Nonconforming Shoreline Development.** Nonconforming shoreline development may be altered; provided, that the nonconforming shoreline development conforms to the requirements of this section.
 - a. **Three-Year Period.** Alterations made within a three-year period will be viewed as a single action for the purposes of determining whether the provisions of this paragraph G.2 must be met.
 - b. **Value of Alterations.** The value of alterations is determined by the Director based on the entire project and not individual permits.
 - c. **Limitations on Alterations.** Alterations may be approved only if consistent with the following limitations:
 - i. No increase in structure footprint shall be permitted.
 - ii. No increase in net square footage shall be permitted.
 - iii. No increase in parking areas or other non-structural exterior site development shall be permitted.

- iv. No footprint associated with a nonconforming shoreline development shall be moved any distance, unless the movement reduces nonconformities to the SMP, and ecological functions are restored in the areas vacated pursuant to a mitigation plan approved by the Director under LUC 20.25E.060.D (Mitigation Requirements and Sequencing).
 - d. Proportional Compliance for Alterations. A nonconforming shoreline development may be altered consistent with the requirements set forth below:
 - i. Threshold Triggering Required Improvements. The standards of this paragraph shall be met when the value of the proposed alterations to the nonconforming shoreline development exceeds 50% of the replacement value of the structure or non-structural exterior site development that is being altered.
 - ii. Exemptions from the Calculation of Replacement Value. The alterations and improvements listed in paragraph G.4 of this section do not count toward the calculation of replacement value thresholds identified in paragraph E of this section.
 - e. Required Improvements associated with Alterations. When alterations meet the threshold in paragraph G.2.d of this section, nonconforming shoreline development shall be brought toward compliance in the following areas:
 - i. Accessory Parking, Loading Space and Maintenance Access requirements as set forth in LUC 20.25E.060.H.
 - ii. Public Access requirements as set forth in LUC 20.25E.060.I.
 - iii. Water quality, stormwater, and nonpoint pollution requirements as set forth in LUC 20.25E.060.L.
 - f. Timing and Cost of Required Improvements.
 - i. Required improvements shall be made as part of the alteration that triggered the required improvements;
 - ii. The value of required improvements shall be limited to 20 percent of the value of the proposed alteration. The applicant shall submit evidence as required by the Director that shows the value of proposed improvements associated with any alteration; and
 - iii. Required improvements shall be made in order of priority listed in paragraph G.2.e of this section unless a deviation in priority order is approved by the Director as necessary to accommodate a function that is an essential component of the nonconforming shoreline development.
- 3. Replacement of Shoreline Nonconforming Development allowed only in Office (O) and in Office and Limited Business (OLB) Land Use Districts pursuant to LUC 20.10.440. Nonconforming shoreline development in the O or OLB Land Use Districts may be replaced; provided, that the replacement conforms to the limitations and proportional compliance requirements contained in paragraphs G.3.c and G.3.d of this section.

- a. Three-Year Period. Improvements made within a three-year period will be viewed as a single action for the purposes of determining whether the provisions of this paragraph G.3 must be met.
- b. Value of Replacement. The value of a replacement is determined by the Director based on the entire project and not individual permits.
- c. Limitations on Replacements. Replacement of a nonconforming shoreline development in the O or OLB Land Use Districts may be approved only if consistent with the following limitations:
 - i. Replacement structures shall only be permitted to accommodate a shoreline use allowed pursuant to LUC Chart 20.25E.030.
 - ii. No increase in structure footprint shall be permitted.
 - iii. No increase in net square footage shall be permitted.
 - iv. No increase in parking areas or other non-structural development shall be permitted.
 - v. The area of the replacement structure footprint may be moved to a less sensitive portion of the site if the movement reduces nonconformities to the SMP or identified critical areas, and shoreline vegetation or critical area functions are restored in the areas vacated pursuant to a mitigation plan approved by the Director under LUC 20.25E.060.D (Mitigation Requirements and Sequencing).
- d. Proportional Compliance for Replacements. A nonconforming shoreline development may be replaced consistent with the requirements set forth below:
 - i. Threshold Triggering Required Improvements. The standards of this paragraph G.3.d shall be met when the value of the proposed replacement of the nonconforming shoreline development exceeds 100% of the replacement value of the structure or non-structural exterior site development that is being replaced, or any improvements that remove and reconstruct an individual structure regardless of cost.
 - ii. Exemptions from the Calculation of Replacement Value. The alterations and improvements listed in LUC 20.25E.040.G.4 do not count toward the calculation of replacement value thresholds identified in paragraph E of this section.
- e. Required Improvements. When replacements meet the threshold in paragraph G.3.d of this section, nonconforming shoreline development shall be brought into compliance with the following provisions:
 - i. Accessory Parking, Loading Space and Maintenance requirements as set forth in LUC 20.25E.060.H.
 - ii. Public Access requirements as set forth in LUC 20.25E.060.I.
 - iii. Water quality, stormwater, and nonpoint pollution requirements as set forth in LUC 20.25E.060.L.

- f. Timing of Required Improvements. Required improvements shall be made as part of the replacement that triggered the required improvements.
- 4. Exemptions from the Calculation of Replacement Value. The following improvements do not count toward the calculation of replacement value thresholds identified in paragraph E of this section:
 - a. Alterations required as a result of a fire prevention inspection;
 - b. Alterations related to the removal of architectural barriers as required by the Americans with Disabilities Act, or the Washington State Building Code (Chapter 19.27 RCW), now or as hereafter amended;
 - c. Alterations required for the seismic retrofit of existing structures;
 - d. Improvements to on-site stormwater management facilities in conformance with Chapter 24.06 BCC, now or as hereafter amended);
 - e. Alterations that reduce off-site impacts (including but not limited to noise, odors, dust, and other particulate emissions); and
 - f. Alterations that meet LEED, Energy Star or other industry-recognized standard that results in improved mechanical system, water savings, or operational efficiency.
- 5. Loss of Nonconforming Shoreline Development Status.
 - a. Discontinuance. If a nonconforming shoreline development is abandoned for a period of 12 months with the intention of abandoning that development, any subsequent development shall thereafter conform to this Part 20.25E LUC. Discontinuance of a nonconforming shoreline development for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.
 - b. Accidental Destruction. When a nonconforming shoreline development is damaged or destroyed by fire, explosion, natural disaster, or other unforeseen circumstances outside the control of the property owner, the structure may be repaired or reconstructed subject only to the following limitations:
 - i. The nonconforming shoreline development shall be repaired or reconstructed within the footprint existing when the destruction occurred, unless the area of the structure footprint is moved to a less sensitive portion of the site, the movement reduces nonconformities to the SMP or identified critical areas, and shoreline vegetation or critical area functions are restored in the areas vacated pursuant to a mitigation plan approved by the Director under LUC 20.25E.060.D (Mitigation Requirements and Sequencing);
 - ii. The repair or reconstruction is initiated within one year of the date of destruction and is diligently pursued;

- iii. Under no circumstances may the reconstruction expand, enlarge, or otherwise increase the nonconformity; and,
- iv. Areas of temporary construction disturbance resulting from reconstruction shall be restored pursuant to a mitigation plan approved by the Director under LUC 20.25E.060.D (Mitigation Requirements and Sequencing).